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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MACFARLANE, an individual,)	Case No.: 5:20-CV-09437-NC
)	
Plaintiff,)	JOINT STATEMENT OF DISCOVERY
)	ISSUES IN DISPUTE
vs.)	
)	
CITIBANK, N.A.; and Does 1 to 100,)	
inclusive,)	
)	
Defendants.)	
)	
CITIBANK, N.A.,)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	

1 YAANA TECHNOLOGIES, LLC, a)
 2 California Corporation, and Does 1 to 10,)
 3 inclusive,)
 4 Defendants.)

5
 6 The parties to the above-entitled action, Plaintiff CHRISTIAN MACFARLANE
 7 (“Plaintiff”) and Defendant CITIBANK, N.A. (“Citibank”), hereby submit this JOINT
 8 STATEMENT pursuant to Magistrate Nathaniel M. Cousins’ Scheduling Order.

9 ISSUES IN DISPUTE

- 10 1. May a party stipulate to time limits and then unilaterally terminate the deposition before
 11 that time is over?

12 Plaintiff’s Position: At the end of the first deposition session, due to Defendant Citibank’s PMQ
 13 witness’ unpreparedness to testify, the parties agreed on the record that Plaintiff could depose the
 14 witness in a second session for the remaining time (2.5 hours), plus five additional hours. Weeks
 15 later, defense counsel unilaterally declared he would produce the witness for no longer than four
 16 hours, but provided no reason; plaintiff rejected the limitation. Defense counsel repeated the
 17 attempted limitation at the deposition; although plaintiff again rejected it, at the end of four hours
 18 into the second session, counsel terminated the deposition (in the middle of questions) by
 19 instructing the witness not to answer any more questions and to turn off her Zoom. Plaintiff
 20 seeks to recover fees and costs associated with preparing for and appearing at the next session, as
 21 permitted by Rule 30, plus an additional four hours to complete the deposition (on top of the 3.5
 22 hours of stipulated time remaining), plus sanctions against Citibank and its counsel.

23 Defendant’s Position: *Federal Rules of Civil Procedure*, Rule 30(d)(1) limits the duration of a
 24 deposition to seven hours.
 25

26 On June 25, 2021, Plaintiff took the deposition of Polly Wagner, Citibank’s PMQ from
 27 9:34 a.m. to 3:36 p.m. This is a case wherein there does not seem to be facts in dispute regarding
 28 when and how Citibank was served with the levies and Citibank’s response thereto. Thus, seven

1 hours of deposition time is sufficient. However, to be overly cooperative, defense counsel
2 agreed to produce Ms. Wagner for another 7.5 hours (one session for four hours and one session
3 for three and half hours). Defense counsel informed on multiple occasions, including email
4 correspondence of July 2 and July 20, Plaintiff's counsel that Ms. Wagner would be produced for
5 two deposition sessions. Plaintiff's counsel did not reject to Ms. Wagner being deposed over
6 two more deposition sessions. In fact, Plaintiff's counsel informed the Court with a July 27,
7 2021 filing through the Declaration of Eileen M. Rice that the next session of Ms. Wagner's
8 deposition would be no longer than four hours in duration (Dkt. 36).

9 On July 28, 2021, Ms. Wagner was again produced for deposition. During the
10 deposition, defense counsel again informed Plaintiff's counsel that the deposition duration was
11 four hours. Defendant counsel further informed Plaintiff's counsel that it is difficult for a
12 deponent to be deposed, including Ms. Wagner for more than seven hours and that Ms. Wagner
13 was located in the Central time zone. The four hour deposition session is necessary as Ms.
14 Wagner is integral to the business and the management of the sixty people in her reporting line.
15 The July 28 deposition concluded after four hours on the record.
16

17 Defense counsel remains willing to produce Ms. Wagner for another deposition for
18 another three and half hours of deposition.

19 In sum, there is no basis, legally or factually, for Citibank to pay fees and costs for the next
20 deposition session.

21 2. May a party produce requested documents in such a fashion – illegible, late, piecemeal –
22 that they cannot effectively be used in the deposition?

23 Plaintiff's Position. In response to Plaintiff's demands for production of documents, Defendant
24 produced illegible and incomplete records, did not produce all responsive documents prior to the
25 first PMQ deposition, did not produce further documents until days and hours before *and even*
26 *after* the second session (PMQ identified additional responsive documents in both sessions), and
27 outstanding documents remain, despite multiple meet and confer attempts. Plaintiff seeks an
28 order for an additional four hours of time to depose the PMQ after all documents have been

1 produced, an order compelling immediate production of all responsive documents, plus fees and
 2 costs for attorney time spent preparing for multiple sessions necessitated by defendant's failures
 3 to produce documents in accordance with discovery rules.

4 Defendant's Position: Citibank has made a complete document production, including the
 5 production of document which are additional to that sought by Plaintiff. Citibank's document
 6 production exceeded 576 pages.

7 Plaintiff possesses Citibank's document production; thus, it is unclear the purported issue
 8 in dispute.

9 This discovery "dispute," including issue 2 is an apparent attempt to burden Citibank and
 10 unnecessarily increase attorney fees in the case. Plaintiff's discovery's efforts in this case have
 11 included directly contacting a Citibank employee in violation of the Professional Rules of
 12 Responsibility.

- 13
 14 3. Should plaintiff be entitled to more time to depose the PMQ witness, where defendant's
 15 attorney objected to nearly every question as vague, including those which use the
 16 witness's own words?

17 Plaintiff's Position: Defense counsel objected to most questions directed to the PMQ as "vague,"
 18 even when the questions cited text in Defendant's documents, or repeated the witness' own
 19 testimony or Citibank's own policies in their phrasing. The objections confused the witness,
 20 delayed the proceedings, and consumed inordinate amounts of record time. Plaintiff seeks an
 21 order instructing Defendant's counsel to refrain from frivolously objecting and granting Plaintiff
 22 four additional hours to depose the proffered witness.

23 Defendant's Position: Plaintiff's position that defense counsel objected to nearly every question
 24 as vague is a blatant false statement.

25 The deposition objections at the June 25 and July 28, 2021 deposition sessions were well-
 26 taken. With one exception wherein the inquiry included attorney-client communications, there
 27 were no instructions to not answer a question. The asserted objections were stated only where
 28 appropriate and to preserve the objection.

1 In sum, there is no basis for any order relating to deposition objections. Purported Issue
2 3 is another attempt to burden Citibank and unnecessarily increase attorney fees in this case.
3

4 DATED: August 18, 2021

KLEIN, HOCKEL, IEZZA & PATEL P.C.

5
6 /s/ Jonathan A. Klein*

7 JONATHAN A. KLEIN
8 EILEEN M. RICE
9 Attorneys for Plaintiff
CHRISTIAN MACFARLANE

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12
13 DATED: August 18, 2021

WOLFE & WYMAN LLP.

14 /s/ David M. Chute

15
16 DAVID M. CHUTE
17 Attorneys for Defendant
CITIBANK, N.A.

18 *Pursuant to Local Rule 5-1(i), the filer attests that all signatories listed, and on whose behalf the
19 filing is submitted, concurs in the filing's content and have authorized the filing.
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